

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Timothy McGuire and James Lee
Joseph Ryan,

Plaintiffs,

v.

Case No. 05-40185

Royal Oak Police Sgt. Douglas Warner,
et al.,

Honorable Sean F. Cox

Defendants.

ORDER DENYING
DEFENDANTS' REQUEST TO ADMIT
DEPUTY LICHOK'S NARRATIVE REPORT INTO EVIDENCE

This matter is currently before the Court on Defendants' request to admit into evidence Deputy Lichok's Narrative Report ("the Lichok Report"), under Fed. R. Evid. 803 (6) or (8). The Lichok Report is attached to Defendants' Brief (Docket Entry No. 173) as Exhibit 1.

The Court concludes that Defendants have not established that the Lichok Report should be admitted under 803(6). Moreover, *Miller v. Field*, 35 F.3d 1088 (6th Cir. 1994), cited in Defendants' own brief, establishes that the Lichok Report cannot be admitted under 803(8).

To be admissible under 803(c)'s exception to the hearsay rule, a report must be a set of factual findings. *Miller, supra*. "The "factual findings" in a report qualifying for a Rule 803(8)(C) exception to the hearsay rule must, however, be based upon the knowledge or observations of the preparer of the report. As stated in the Advisory Committee Notes to Rule 803, "[i]n a hearsay situation, the declarant is, of course, a witness and neither this rule nor Rule 804 dispenses with the requirement of firsthand knowledge. It may appear from his statement or

be inferable from circumstances.” Additionally, the comments note that “[p]olice reports have generally been excluded *except to the extent to which they incorporate firsthand observations of the officer.*” (Emphasis added.)” *Id.*

Here, however, the bulk of the Lichok Report contains neither factual findings by Lichok, the report’s preparer, nor conclusions and opinions based upon such findings. Rather, the Lichok Report is largely a recitation of statements made by witnesses.

Defendants further assert that they are not offering the Lichok Report for the truth of the matter asserted but, rather, to establish the effect that it had upon the prosecutor who reviewed it. This new argument fails for, among other things, lack of foundation.

Accordingly, **IT IS ORDERED** that Defendants’ request to admit the Lichok report into evidence is **DENIED**.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: August 10, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 10, 2009, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager